



## State of Washington PUBLIC DISCLOSURE COMMISSION

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TO: Members, Public Disclosure Commission  
FROM: Nancy Krier, General Counsel  
DATE: May 16, 2012  
SUBJECT: Possible Amendments to Interpretation 00-03, Use of Judicial Robes and Courtrooms in Campaign Literature - May 24, 2012 Meeting

### **Agenda Item**

This memorandum concerns possible updates to Interpretation 00-03, *Use of Robes in Campaign Literature by District and Municipal Court Judges; Use of Courtrooms in Campaign Literature by District and Municipal Court Judges*. This is part of the Commission's ongoing updates to its interpretative statements following the recodification of RCW 42.17 to RCW 42.17A.

### **Discussion**

RCW 42.17A.555 (former RCW 42.17.130) restricts use of public facilities in campaigns. Interpretation 00-03 primarily addresses campaign use of certain public facilities --- judicial robes and courtrooms --- by district and municipal court judges. The Commission adopted this interpretation in 2000 following related inquiries about judicial campaigns, and with input from the Office of the Administrator for the Courts (now renamed the Administrative Office of the Courts).

The interpretation reflects the Commission's harmonizing of its statutes and rules restricting use of public facilities, with the separate rules also governing judges that are enforced through the judicial branch. The interpretation also reflects that since the enactment of the State Ethics Law at RCW 42.52 (and its separate prohibition on use of public facilities for judicial officers subject to that act), the Commission's jurisdiction with respect to use of public facilities by judges covers only district and municipal court judges, and not superior court or court of appeals judges, or supreme court justices.

Since 2000, the following statutory changes and other changes have occurred that impact this interpretation:

- **Recodification.** RCW 42.17 was recodified to RCW 42.17A effective January 1, 2012. Staff proposes amending the interpretation to reflect these changes.

- **Rules.** The Commission updated its rules in Title 390 WAC to reflect the recodification. Staff proposes amending the interpretation to reflect these changes.
- **Code of Judicial Conduct.** The Supreme Court adopted a new Code of Judicial Conduct (CJC) effective January 1, 2011, changing the numbering of the Canons in the new CJC, some of which are referenced in the interpretation.<sup>1</sup> These are the rules from the judicial branch that also govern judges. Staff proposes amending the interpretation to reflect these changes.
- **Other Amendments.** In 2009 the Legislature amended the false political speech statute (now codified at RCW 42.17A.335). Because this interpretation primarily addresses use of public facilities (robes and courtrooms), staff proposes moving that statutory reference to a footnote.
- **Other Activities.** In 2000, the Commission asked staff to post on the PDC website an Attorney General's Office memorandum issued to state agencies providing guidance on the restrictions on the use of public facilities in campaigns. See reference at the end of the interpretation. Since then, the AG's Office has regularly re-issued the memo, the last time in 2009. The memo primarily addresses RCW 42.52, the State Ethics Law, impacting *state* employees and *state* officers.

Since 2000, the Commission has also provided its own guidance with respect to *local* governments, issuing two interpretations: Interpretation 04-02 (*Guidelines for Local Government Agencies in Election Campaigns*) and Interpretation 01-03 (*Guidelines for School Districts in Election Campaigns*). Neither addresses robes or courtrooms specifically, although they do address use of public facilities.

Staff proposes updating the references at the end of the robes/courtrooms interpretation by removing the older referenced materials, and adding a note concerning Interpretation 04-02.

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<sup>1</sup>Interpretation 00-03 references (now former) Canons 2, 4 and 7. Those canons directed judges to avoid impropriety and the appearance of impropriety in their activities (Canon 2), authorized judges to engage in certain quasi-judicial activities (Canon 4), and limited political activities of judges (Canon 7). Former Canon 7(b)(1)(c) is specifically referenced in the judicial branch Ethics Advisory Opinion also cited in Interpretation 00-03. That canon prohibited candidates for a judicial office, including incumbent judges, from knowingly misrepresenting the identity, qualifications, present position, or other fact concerning the candidate or opponent. [Former Canon 7(b)(1)(d) is also referenced in the opinion but the text could no longer be located.]

Under the new CJC effective January 1, 2011, Canon 1 requires a judge to uphold and promote the independence, integrity and impartiality of the judiciary, and avoid the impropriety and the appearance of impropriety. Rule 1.3 of that canon directs that a judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so. Canon 4 directs that a judge or candidate for judicial office shall not engage in political or campaign activity that is inconsistent with the independence, integrity or impartiality of the judiciary. Rule 4.1(A)(10) under that Canon directs that unless otherwise permitted law or the CJC rules, a judge or judicial candidate shall not knowingly, or with reckless disregard for the truth, make any false or misleading statement. (The same requirement is explained in Comment 7 to that rule.) Staff proposes that the Commission amend Interpretation 00-03 to add these new citations, plus to add the comment about the new CJC that has been posted with the Ethics Advisory Opinion on the courts' website.

### **Input to Date**

Staff solicited input on the enclosed possible amendments to the interpretation from staff of the Administrative Office of the Courts, and from staff of the Commission on Judicial Conduct. Input received to date is reflected in the enclosed draft.

### **Staff Recommendation**

In sum, staff recommends that the Commission amend Interpretation 00-03 to address these statutory and rule changes, and other developments. Staff also identified a couple of other smaller proposed edits and updates, to improve clarity. See enclosed draft (proposed changes are in red and highlighted).

Enclosure: Draft Possible Amendments to Interpretation 00-03

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## PDC Interpretation

Draft Possible Updates for Discussion – May 2012

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Approval Date: July 25, 2000;  
Amended XXXXX

Number: 00-03

Status: Approved

Supersedes: Not Applicable

References: RCW 42.17.130, 42.17.530  
42.17A.555

Approved by: The Commission

Canons of Judicial Conduct 7, 1, 4

Ethics Advisory Committee Opinion No. 88-3

See also: Chapter 42.52 RCW  
Washington State Court General Rule (GR) 10  
*Judicial Conduct Reporter* (Spring 1984)

Former: RCW 42.17.130

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### Use of Robes in Campaign Literature by District and Municipal Court Judges Use of Courtrooms in Campaign Literature by District and Municipal Court Judges

Under what circumstances may elected district and municipal court judges wear their robes in campaign literature, given the prohibitions in RCW 42.17.130 42.17A.555 on the use of public facilities in campaigns?<sup>1</sup>

Under what circumstances may district and municipal court judges use courtrooms in campaign literature, given the prohibitions in RCW 42.17.130 42.17A.555?

### Robes

According to the Office of the Administrator for the Administrative Office of the Courts, in performing court business, district court judges may wear robes purchased at public expense, or may purchase their own robes with private funds.<sup>2</sup> They may wear their robes to perform duties outside the courtroom, such as officiating at weddings. The Public Disclosure Commission has been advised that there are no local policies governing the use of robes by district or municipal court judges. Copies of official photos of judges wearing their robes may be available to the media and the public in some counties jurisdictions; in other counties jurisdictions, the judges may incur the costs of producing the photographs. It has come to the

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<sup>1</sup> This interpretation does not address any of the campaign finance and reporting requirements for judicial candidates and campaigns, which are otherwise still required under chapter 42.17A RCW.

<sup>2</sup> Information on purchase of robes for municipal court judges was not obtained, however, for the purposes of this interpretation it will be presumed that some robes are purchased with public funds and some with private funds.

Commission's attention that these district court judges may use photographs of themselves, wearing their robes, in campaign literature.

The ~~Public Disclosure~~ Commission enforces the election and campaign reporting requirements in chapter 42.17A RCW. RCW ~~42.17.130~~ ~~42.17A.555~~ forbids the use of public offices and agency facilities in campaigns, and reads in part as follows:

*No elective official nor any employee of his ~~or her~~ office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion ~~of~~ or opposition to any ballot proposition.*

This statute generally prohibits the use of public property for campaigns for most elected officials. ~~Since January 1, 1995, however, RCW 42.17.130 has been superseded as to state officers and employees with the adoption of RCW 42.52.010 as part of the State Ethics Law. RCW 42.17.131.~~ The State Ethics Law at RCW 42.52.180 ~~applies to state officers and employees and~~ also prohibits ~~state officers from using the use of~~ state resources for political campaigns. RCW 42.52.010(18) defines "state officer" to include judges of the superior court, judges of the court of appeals, and justices of the supreme court. The State Commission on Judicial Conduct has authority to enforce RCW 42.52 against those judges subject to that act, pursuant to RCW 42.52.370.

Therefore, with respect to judges, RCW ~~42.17.130~~ ~~42.17A.555~~ ~~now~~ applies only to the remaining levels of judges, and they are district court judges and municipal court judges.

~~Another statute, RCW 42.17.530 (false political advertising) provides that:~~

~~(1) It is a violation of this chapter for a person to sponsor with actual malice~~

~~...~~

~~(b) Political advertising that falsely represents that a candidate is the incumbent for the office sought when in fact the candidate is not the incumbent.~~

Judges at all levels are subject to the ~~Canons on~~ ~~Code of~~ Judicial Conduct (CJC), including Canon ~~74~~, which limits political activities of judges, and ~~Canon 21 at CJC 1.3~~, which prohibits judges from ~~using~~ ~~abusing~~ their positions to advance their personal interests. Under the courts' General Rule 10, the Supreme Court Chief Justice also appoints an Ethics Advisory Committee, which is designated as the body to give advice with respect to the application of the Code of Judicial Conduct to the officials of the judicial branch. The Ethics Advisory Committee issued Opinion No. 88-3 that reads as follows:

Question:

*May a district court judge, who is running for a superior court position, be pictured in campaign literature in a judicial role if the caption of the picture indicates that the judge is a district court judge?*

Answer:

*It is proper under CJD Canon 7(b)(1)(c) and (d) <sup>3</sup> for a district court judge, who is running for a superior court position, to be pictured in campaign literature in a judicial robe so long as the caption of the picture indicates that the judge is a district court judge, since this disclosure of the district court judge position would prevent the material from being misleading or misconstrued.<sup>4</sup>*

The Commission is also aware of other authorities ~~which~~ <sup>being</sup> that it is common and appropriate for judges to wear their judicial robes in campaign literature, even when there are state laws limiting the use of public property for campaigns, so long as the pictures are not misleading and the picture's caption indicates the offices and dates served. See, for example, *Judicial Conduct Reporter* (Spring 1984).

The Commission recognizes that the intent of chapter 42.17A RCW is to maintain public confidence in government at all levels, including during election campaigns. The Commission also recognizes that certain activities of the judiciary have traditionally had oversight by that separate branch of government. Reading RCW 42.17.130 42.17A.555 together with the Ethics Advisory Opinion, the Commission concludes that ~~the opinion~~ <sup>Opinion No. 88-3</sup> is consistent with the goal of RCW 42.17.130 42.17A.555, which is to provide independent oversight on the limits of the use of public facilities and property in campaigns such as for district court judge. The Ethics Advisory Committee, the Commission on Judicial Conduct, and the courts provide that oversight on the use of judicial robes in campaigns. For consistency purposes for all levels of judges, the Commission will defer to the interpretation in Opinion 88-3 for the use of robes in campaign literature for judges subject to RCW 42.17.130 42.17A.555, which would include district court judges.<sup>5</sup> ~~The Commission also concludes that it would be a violation of RCW 42.17.530 for a judicial candidate who does not hold a judicial office to be photographed in a robe, because such a picture would falsely suggest~~

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<sup>3</sup> The comment to this opinion states: "The Supreme Court adopted a new Code of Judicial Conduct effective January 1, 2011. In addition to reviewing the ethics advisory opinions, the following should be noted: CJC 4.1(A)(10), CJC 4.1 Comment [7]." The opinion is available at [www.courts.wa.gov/ethics](http://www.courts.wa.gov/ethics).

<sup>4</sup> The Ethics Advisory Committee has also issued opinions regarding judicial campaigns generally and the applicability of the reporting requirements of ~~former~~ chapter 42.17 RCW (Opinion No. 98-10); the use of public resources with respect to endorsements and job titles (Opinion No. 93-9); the use of court personnel in campaigns (Opinion 86-9); and activities by judges regarding local bond issues (Opinion No. 93-32 and 94-10). RCW 42.17 was recodified to RCW 42.17A effective January 1, 2012. In addition, Opinion No. 94-10 concerns campaigns and the use of public facilities by judicial officers subject to RCW 42.52. These opinions, and others addressing judicial election campaigns, are available at [www.courts.wa.gov/ethics](http://www.courts.wa.gov/ethics).

<sup>5</sup> Readers should also be advised of RCW 42.17A.335 regarding political advertising and electioneering communications.

**incumbency**. The Commission will also apply this interpretation to any campaigns **of involving** municipal court judges.

## **Courtrooms**

The Commission's regulation at WAC 390-05-271(2) provides in pertinent part that:

*RCW **42.17.130** **RCW 42.17A.555** does not prevent a public office or agency from (a) making facilities available on a nondiscriminatory, equal access basis for political uses...*

The Commission concludes that it is not a violation of RCW **42.17.130** **42.17A.555** for judicial candidates to use the courtroom for depictions in campaign advertising literature so long as the facility is available to all persons on a non-discriminatory, equal-access basis. This includes being photographed on the bench.

### **Supporting documentation:**

- ~~Public Disclosure Commission memo (13KB in PDF format)~~
- ~~Attorney General's Office memo~~

See also: PDC Interpretation 04-02 *Guidelines for Local Government Agencies in Election Campaigns* for analysis regarding use of local government facilities generally.